

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1845

Introduced by Assembly Member Solorio

February 22, 2012

An act to amend ~~Section~~ *Sections 1030, 1088.5, 1329.1, 1375.1, 3701, 4701, 13021, and 13021.5* of, and to add *Section 1026.1* to, the Unemployment Insurance Code, relating to unemployment ~~compensation~~ *insurance*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1845, as amended, Solorio. Unemployment compensation benefits: overpayment ~~assessments~~: *assessments*: *termination*: *income tax withholding*.

Existing law requires the Director of Employment Development to credit to each employer reserve account benefit overpayments collected in the 4 quarters prior to the computation date.

This bill would prohibit the director from crediting an employer reserve account for benefit overpayments collected if the employer fails to respond timely or adequately to claim notifications from the Employment Development Department for a claim that was subsequently overpaid and establishes a pattern of failing to respond timely or adequately to requests from the department for information relating to unemployment insurance claims.

Existing law requires each employer to file with the Employment Development Department a report on new employees hired in this state that the employer anticipates paying wages.

This bill would include in that report the hiring of an employee previously employed by that employer, but who has not been employed

by that employer for at least 60 consecutive days, but would not include in that report the hiring of an employee previously employed by that employer less than 60 consecutive days prior to the rehiring.

Existing law allows an employer that is entitled to receive notice of the filing of a new or additional claim for unemployment benefits to submit to the Employment Development Department facts explaining the reasons for the claimant leaving the employer's employ; however, the employer is restricted to providing reasons only from a specified list that the department will use to determine the cause of termination. Existing law also allows a base period employer that is not entitled to receive notice of the filing of a new or additional claim for unemployment benefits, but is entitled to notice of computation, to submit to the department facts explaining the reasons for the claimant leaving the employer's employ; however, the employer is restricted to providing reasons only from a specified list that the department will use to determine the cause of termination.

This bill would expand these lists to include as a reason, the claimant leaving the employer's employ for a substantially better job.

Existing law allows an employer that is entitled to receive notice of the filing of a primary claim or additional claim for extended unemployment compensation benefits or federal-state extended benefits to submit to the Employment Development Department any facts explaining the reason for the claimant leaving the employer's employ; however, the employer is restricted to providing reasons only from a specified list that the department will use to determine the cause of termination.

This bill would expand these lists to include the claimant leaving the employer's employ for reason of a substantially better job or to protect his or her family or himself or herself from domestic violence abuse.

Existing law provides that a claim for unemployment compensation benefits may be canceled if the individual has not been deemed ineligible for unemployment compensation benefits, has not been overpaid unemployment compensation benefits, and has not collected unemployment compensation benefits.

This bill would, in order to cancel a claim for unemployment compensation benefits, add an additional requirement that the individual request to cancel the claim during the benefit year of that claim or the extended duration period of that claim.

~~Existing law creates and defines the Benefit Audit Fund and provides that assessments for overpaid unemployment compensation benefits~~

shall be deposited into this fund. Existing law creates the Unemployment Fund as a continuously appropriated fund.

Existing law authorizes the Employment Development Department to administer the federal-state unemployment insurance program and provides for the payment of unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own.

Federal law requires, on and after October 22, 2013, at the time a state agency determines an erroneous payment from its unemployment insurance fund was made to an individual due to fraud committed by the individual, the assessment of a penalty on the individual in an amount of not less than 15% of the amount of the erroneous payment, and requires that assessment to be deposited into the unemployment insurance fund of the state.

Under existing law, if the Director of Employment Development finds that an individual has been overpaid unemployment compensation benefits because he or she, for the purpose of obtaining those benefits, either made a false statement or representation, with actual knowledge of the falsity, or withheld a material fact, the director is required to assess against the individual an amount equal to 30% of the overpayment amount. Existing law requires the assessments collected to be deposited in the Benefit Audit Fund.

This bill would require that assessments, *for overpaid unemployment compensation benefits*, collected after October 21, 2013, ~~for overpaid unemployment compensation benefits~~ be deposited into the Benefit Audit Fund and the Unemployment Fund equally. By providing a new source of revenue for the continuously appropriated Unemployment Fund, this bill would make an appropriation.

Existing law requires employers to withhold income taxes each calendar quarter, file a withholding report, a quarterly return, a report of wages, and pay over the taxes so required to be withheld. Existing law requires employers to remit the total amount of income tax withheld within a specified number of banking days, and uses banking days to determine when a payment is complete.

This bill would, under those provisions, on and after January 1, 2013, use business days to measure time instead of banking days, as provided.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1026.1 is added to the Unemployment*
2 *Insurance Code, to read:*

3 *1026.1. Notwithstanding any other law, the director shall not*
4 *credit an employer reserve account for benefit overpayments*
5 *collected if an employer or an agent of the employer does both of*
6 *the following:*

7 *(a) Fails to respond timely or adequately to claim notifications*
8 *from the department for a claim that was subsequently overpaid.*

9 *(b) Establishes a pattern of failing to respond timely or*
10 *adequately to requests from the department for information relating*
11 *to unemployment insurance claims.*

12 *SEC. 2. Section 1030 of the Unemployment Insurance Code is*
13 *amended to read:*

14 1030. (a) ~~Any~~ *An employer who that* is entitled under Section
15 1327 to receive notice of the filing of a new or additional claim
16 may, within 10 days after mailing of the notice, submit to the
17 department any facts within its possession disclosing whether the
18 claimant left the employer's employ voluntarily and without good
19 cause or left under one of the following circumstances:

20 (1) The claimant was discharged from the employment for
21 misconduct connected with his or her work.

22 (2) The claimant's discharge or quitting from his or her most
23 recent employer was the result of an irresistible compulsion to use
24 or consume intoxicants including alcoholic beverages.

25 (3) The claimant was a student employed on a temporary basis
26 and whose employment began within, and ended with his or her
27 leaving to return to school at the close of, his or her vacation
28 period.

29 (4) The claimant left the employer's employ to accompany his
30 or her spouse or domestic partner to a place or to join him or her
31 at a place from which it is impractical to commute to the
32 employment, and to which a transfer of the claimant by the
33 employer is not available.

34 (5) The claimant left the employer's employ to protect his or
35 her family or himself or herself from domestic violence abuse.

36 (6) *The claimant left the employer's employ to take a*
37 *substantially better job.*

1 The period during which the employer may submit these facts
2 may be extended by the director for good cause.

3 (b) ~~Any~~ A base period employer that is not entitled under Section
4 1327 to receive notice of the filing of a new or additional claim
5 and is entitled under Section 1329 to receive notice of computation
6 may, within 15 days after mailing of the notice of computation,
7 submit to the department any facts within its possession disclosing
8 whether the claimant left the employer's employ voluntarily and
9 without good cause or left under one of the following
10 circumstances:

11 (1) The claimant was discharged from the employment for
12 misconduct connected with his or her work.

13 (2) The claimant was a student employed on a temporary basis
14 and whose employment began within, and ended with his or her
15 leaving to return to school at the close of, his or her vacation
16 period.

17 (3) The claimant left the employer's employ to accompany his
18 or her spouse or domestic partner to a place or join him or her at
19 a place from which it is impractical to commute to the employment,
20 and to which a transfer of the claimant by the employer is not
21 available.

22 (4) The claimant left the employer's employ to protect his or
23 her family or himself or herself from domestic violence abuse.

24 (5) *The claimant left the employer's employ to take a*
25 *substantially better job.*

26 The period during which the employer may submit these facts
27 may be extended by the director for good cause.

28 (c) The department shall consider these facts together with any
29 information in its possession. If the employer is entitled to a ruling
30 under subdivision (b) or to a determination under Section 1328,
31 the department shall promptly notify the employer of its ruling as
32 to the cause of the termination of the claimant's employment. The
33 employer may appeal from a ruling or reconsidered ruling to an
34 administrative law judge within 20 days after mailing or personal
35 service of notice of the ruling or reconsidered ruling. The 20-day
36 period may be extended for good cause, which includes, but is not
37 limited to, mistake, inadvertence, surprise, or excusable neglect.
38 The director is an interested party to ~~any~~ an appeal. The department
39 may for good cause reconsider ~~any~~ a ruling or reconsidered ruling
40 within either five days after the date an appeal to an administrative

1 law judge is filed or, if ~~no~~ *an* appeal is *not* filed, within 20 days
2 after mailing or personal service of notice of the ruling or
3 reconsidered ruling. However, a ruling or reconsidered ruling that
4 relates to a determination that is reconsidered pursuant to
5 subdivision (a) of Section 1332 may also be reconsidered by the
6 department within the time provided for reconsideration of that
7 determination.

8 (d) For purposes of this section only, if the claimant voluntarily
9 leaves the employer's employ without notification to the employer
10 of the reasons for the leaving, and if the employer submits all of
11 the facts within its possession concerning the leaving within the
12 applicable time period referred to in this section, the leaving is
13 presumed to be without good cause.

14 (e) An individual whose employment is terminated under the
15 compulsory retirement provisions of a collective bargaining
16 agreement to which the employer is a party shall not be deemed
17 to have voluntarily left his or her employment without good cause.

18 (f) For purposes of this section "spouse" includes a person to
19 whom marriage is imminent, and "domestic partner" includes a
20 person to whom a domestic partnership, as described in Section
21 297 of the Family Code, is imminent.

22 *SEC. 3. Section 1088.5 of the Unemployment Insurance Code*
23 *is amended to read:*

24 1088.5. (a) In addition to information reported in accordance
25 with Section 1088, effective July 1, 1998, each employer shall file,
26 with the department, the information provided for in subdivision
27 (b) on new employees.

28 (b) Each employer shall report the hiring of ~~any~~ *an* employee
29 who works in this state and to whom the employer anticipates
30 paying wages. *The report shall include the hiring of an employee*
31 *previously employed by the employer, but has not been employed*
32 *by that employer for 60 or more consecutive days prior to rehiring.*
33 *The report shall not include the hiring of an employee previously*
34 *employed by that employer less than 60 consecutive days prior to*
35 *rehiring.*

36 (c) (1) This section shall not apply to ~~any~~ *a* department, agency,
37 or instrumentality of the United States.

38 (2) State agency employers shall not be required to report
39 employees performing intelligence or counterintelligence functions,
40 if the head of the agency has determined that reporting pursuant

1 to this section would endanger the safety of the employee or
2 compromise an ongoing investigation or intelligence mission.

3 (d) (1) Employers shall submit a report as described in
4 paragraph (4) within 20 days of hiring any employee whom the
5 employer is required to report pursuant to this section.

6 (2) Notwithstanding subdivision (a), employers transmitting
7 reports magnetically or electronically shall submit the report by
8 two monthly transmissions not less than 12 days and not more
9 than 16 days apart.

10 (3) For purposes of this section, an employer that has employees
11 in two or more states and that transmits reports magnetically or
12 electronically may designate one state in which the employer has
13 employees to which the employer will transmit the report described
14 in paragraph (4). Any employer that transmits reports pursuant to
15 this paragraph shall notify the Secretary of Health and Human
16 Services in writing as to which state the employer designates for
17 the purpose of sending reports.

18 (4) The report shall contain the following:

19 (A) The name, address, and social security number of the
20 employees.

21 (B) The employer's name, address, state employer identification
22 number (if one has been issued), and identifying number assigned
23 to the employer under Section 6109 of the Internal Revenue Code
24 of 1986.

25 (C) The first date the employee worked.

26 (5) Employers may report pursuant to this section by submitting
27 a copy of the employee's W-4 form, a form provided by the
28 department, or any other hiring document transmitted by first-class
29 mail, magnetically, or electronically.

30 (e) For each failure to report the hiring of an employee, as
31 required and within the time required by this section, unless the
32 failure is due to good cause, the department may assess a penalty
33 of twenty-four dollars (\$24), or four hundred ninety dollars (\$490)
34 if the failure is the result of conspiracy between the employer and
35 employee not to supply the required report or to supply a false or
36 incomplete report.

37 (f) Information collected pursuant to this section may be used
38 for the following purposes:

39 (1) Administration of this code.

(2) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(3) Administration of employment security and workers' compensation programs.

(4) Providing employer or employee information to the Franchise Tax Board and the State Board of Equalization for the purpose of tax or fee enforcement.

(5) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(g) For purposes of this section, "employer" includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.

SEC. 4. Section 1329.1 of the Unemployment Insurance Code is amended to read:

1329.1. A claim for unemployment compensation benefits may be canceled if all of the following apply:

(a) The individual has not been deemed ineligible for unemployment compensation benefits.

(b) The individual has not been overpaid unemployment compensation benefits.

(c) The individual has not collected unemployment compensation benefits.

(d) *The individual requests to cancel the claim during the benefit year of that claim, or in the case of a claim for federal-state extended duration benefits, during the extended duration period of that claim.*

SECTION 1.

SEC. 5. Section 1375.1 of the Unemployment Insurance Code is amended to read:

1375.1. (a) If the director finds that an individual has been overpaid unemployment compensation benefits because he or she willfully, for the purpose of obtaining unemployment compensation benefits, either made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact, the director shall assess against the individual an amount equal to 30 percent of the overpayment amount. Assessments collected under this section, on or before October 21, 2013, shall be deposited in the Benefit Audit Fund.

(b) After October 21, 2013, assessments collected under subdivision (a) shall be deposited as follows:

(1) Fifty percent in the Benefit Audit Fund.

(2) Fifty percent in the Unemployment Fund.

SEC. 6. *Section 3701 of the Unemployment Insurance Code is amended to read:*

3701. (a) (1) ~~Any~~ *An employer who that* is entitled under Section 3654 to notice of the filing of a primary claim or additional claim and ~~who that~~, within 10 days after mailing of the notice, submits to the department any facts within its possession disclosing whether the exhaustee left the most recent employment with the employer voluntarily and without good cause or was discharged from the employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available, or whether the claimant's discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages, *or whether the claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse, or whether the claimant left the employer's employ to take a substantially better job*, shall be entitled to a ruling as prescribed by this section. The period during which the employer may submit these facts may be extended by the director for good cause.

(2) For purposes of this section, "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

(b) The department shall consider these facts together with any information in its possession. If the employer is entitled to a determination pursuant to Section 3655, the department shall promptly notify the employer of its ruling as to the cause of the termination of the exhaustee's most recent employment. The employer may appeal from a ruling or reconsidered ruling to an

1 administrative law judge within 20 days after mailing or personal
2 service of notice of the ruling or reconsidered ruling. The 20-day
3 period may be extended for good cause, which shall include, but
4 not be limited to, mistake, inadvertence, surprise, or excusable
5 neglect. The director shall be an interested party to ~~any~~ *an* appeal.
6 The department may for good cause reconsider ~~any~~ *a* ruling or
7 reconsidered ruling within either five days after the date an appeal
8 to an administrative law judge is filed or, if ~~no~~ *an* appeal is *not*
9 filed, within 20 days after mailing or personal service of notice of
10 the ruling or reconsidered ruling, except that ~~any~~ *a* ruling or
11 reconsidered ruling which related to a determination that is
12 reconsidered pursuant to subdivision (a) of Section 1332 may also
13 be reconsidered by the department within the time provided for
14 reconsideration of that determination.

15 (c) For purposes of this section only, if the claimant voluntarily
16 leaves the employer's employ without notification to the employer
17 of the reasons therefor, and if the employer submits all of the facts
18 within its possession concerning the leaving within the applicable
19 time period referred to in this section, the leaving shall be presumed
20 to be without good cause.

21 (d) An individual whose employment is terminated under the
22 compulsory retirement provisions of a collective bargaining
23 agreement to which the employer is a party shall not be deemed
24 to have voluntarily left his or her employment without good cause.

25 (e) Rulings under this section shall have the effect prescribed
26 by Section 1032.

27 *SEC. 7. Section 4701 of the Unemployment Insurance Code is*
28 *amended to read:*

29 4701. (a) (1) ~~Any~~ *An* employer ~~who~~ *that* is entitled under
30 Section 4654 to notice of the filing of an application or additional
31 claim and who, within 10 days after mailing of the notice, submits
32 to the department any facts within its possession disclosing whether
33 the individual left the most recent employment with the employer
34 voluntarily and without good cause or was discharged from the
35 employment for misconduct connected with his or her work, or
36 whether the claimant was a student employed on a temporary basis
37 and whose employment began within, and ended with his or her
38 leaving to return to school at the close of, his or her vacation
39 period, or whether the claimant left the employer's employ to
40 accompany his or her spouse or domestic partner to a place or to

1 join him or her at a place from which it is impractical to commute
2 to the employment, and to which a transfer of the claimant by the
3 employer is not available, or whether the claimant's discharge or
4 quit from his or her most recent employer was the result of an
5 irresistible compulsion to use or consume intoxicants including
6 alcoholic beverages, *or whether the claimant left the employer's*
7 *employ to protect his or her family or himself or herself from*
8 *domestic violence abuse, or whether the claimant left the*
9 *employer's employ to take a substantially better job*, shall be
10 entitled to a ruling as prescribed by this section. The period during
11 which the employer may submit these facts may be extended by
12 the director for good cause.

13 (2) For purposes of this section, "spouse" includes a person to
14 whom marriage is imminent, and "domestic partner" includes a
15 person to whom a domestic partnership, as described in Section
16 297 of the Family Code, is imminent.

17 (b) The department shall consider the facts together with any
18 information in its possession. If the employer is entitled to a
19 determination pursuant to Section 4655, the department shall
20 promptly issue to the employer its ruling as to the cause of the
21 termination of the individual's most recent employment. The
22 employer may appeal from a ruling or reconsidered ruling to an
23 administrative law judge within 20 days after mailing or personal
24 service of notice of the ruling or reconsidered ruling. The 20-day
25 period may be extended for good cause, which shall include, but
26 not be limited to, mistake, inadvertence, surprise, or excusable
27 neglect. The director shall be an interested party to ~~any~~ an appeal.
28 The department may for good cause reconsider ~~any~~ a ruling or
29 reconsidered ruling within either five days after the date an appeal
30 to an administrative law judge is filed or, if no appeal is filed,
31 within 20 days after mailing or personal service of notice of the
32 ruling or reconsidered ruling, except that ~~any~~ a ruling or
33 reconsidered ruling that relates to a determination that is
34 reconsidered pursuant to subdivision (a) of Section 1332 may also
35 be reconsidered by the department within the time provided for
36 reconsideration of that determination.

37 (c) For purposes of this section only, if the claimant voluntarily
38 leaves the employer's employ without notification to the employer
39 of the reasons therefor, and if the employer submits all of the facts
40 within its possession concerning the leaving within the applicable

1 time period referred to in this section, the leaving shall be presumed
2 to be without good cause.

3 (d) An individual whose employment is terminated under the
4 compulsory retirement provisions of a collective bargaining
5 agreement to which the employer is a party shall not be deemed
6 to have voluntarily left his or her employment without good cause.

7 (e) Rulings under this section shall have the effect prescribed
8 by Section 1032.

9 *SEC. 8. Section 13021 of the Unemployment Insurance Code*
10 *is amended to read:*

11 13021. (a) Every employer required to withhold any tax under
12 Section 13020 shall for each calendar quarter, whether or not wages
13 or payments are paid in the quarter, file a withholding report, a
14 quarterly return, as prescribed in subdivision (a) of Section 1088,
15 and a report of wages in a form prescribed by the department, and
16 pay over the taxes so required to be withheld. The report of wages
17 shall include individual amounts required to be withheld under
18 Section 13020 or withheld under Section 13028. Except as provided
19 in subdivisions (c) and (d), the employer shall file a withholding
20 report, a quarterly return, as prescribed in subdivision (a) of Section
21 1088, and a report of wages, and remit the total amount of income
22 taxes withheld during the calendar quarter on or before the last
23 day of the month following the close of the calendar quarter.

24 (b) Every employer electing to file a single annual return under
25 subdivision (d) of Section 1110 shall report and pay any taxes
26 withheld under Section 13020 on an annual basis within the time
27 specified in subdivision (d) of Section 1110.

28 (c) (1) Effective January 1, 1995, whenever an employer is
29 required, for federal income tax purposes, to remit the total amount
30 of withheld federal income tax in accordance with Section 6302
31 of the Internal Revenue Code and regulations thereunder, and the
32 accumulated amount of state income tax withheld is more than
33 five hundred dollars (\$500), the employer shall remit the total
34 amount of income tax withheld for state income tax purposes within
35 the number of ~~banking~~ *business* days as specified for withheld
36 federal income taxes by Section 6302 of the Internal Revenue
37 Code, and regulations thereunder.

38 (2) Effective January 1, 1996, the five hundred dollar (\$500)
39 amount referred to in paragraph (1) shall be adjusted annually as
40 follows, based on the annual average rate of interest earned on the

Pooled Money Investment Fund Account as of June 30 in the prior fiscal year:

Average Rate of Interest		
Greater than or equal to 9 percent:		\$ 75
Less than 9 percent, but greater than or equal to 7 percent:		250
Less than 7 percent, but greater than or equal to 4 percent:		400
Less than 4 percent:		500

(d) (1) Notwithstanding subdivisions (a) and (c), for calendar years beginning prior to January 1, 1995, if in the 12-month period ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for eight-month periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was fifty thousand dollars (\$50,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eight-month period, as ~~defined~~ *described* by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (c), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as ~~defined~~ *described* under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars (\$20,000) or more, the employer shall remit the total amount of income tax withheld within the number of ~~banking~~ *business*

1 days as specified for federal income taxes by Section 6302 of the
2 Internal Revenue Code and regulations thereunder. For purposes
3 of this subdivision, payment shall be made by electronic funds
4 transfer in accordance with Section 13021.5, for one calendar year
5 beginning on January 1. Payment is deemed complete on the date
6 the electronic funds transfer is initiated if settlement to the state's
7 demand account occurs on or before the ~~banking~~ *business* day
8 following the date the transfer is initiated. If settlement to the
9 state's demand account does not occur on or before the ~~banking~~
10 *business* day following the date the transfer is initiated, payment
11 is deemed complete on the date settlement occurs. The department
12 shall, on or before October 31 of the prior year, notify all employers
13 required by this paragraph to make payments by electronic funds
14 transfer of these requirements.

15 (3) Notwithstanding paragraph (2), effective January 1, 1995,
16 electronic funds transfer payments that are subject to the one-day
17 deposit rule, as ~~defined~~ *described* by Section 6302 of the Internal
18 Revenue Code and regulations thereunder, shall be deemed timely
19 if the payment settles to the state's demand account within three
20 ~~banking~~ *business* days after the date the employer meets the
21 threshold for the one-day deposit rule.

22 (4) Any taxpayer required to remit payments pursuant to
23 paragraphs (1) and (2) may request from the department a waiver
24 of those requirements. The department may grant a waiver only if
25 it determines that the particular amounts paid in excess of fifty
26 thousand dollars (\$50,000) or twenty thousand dollars (\$20,000),
27 as stated in paragraphs (1) and (2), respectively, were the result of
28 an unprecedented occurrence for that employer, and were not
29 representative of the employer's cumulative average payment in
30 prior years.

31 (5) ~~Any~~ *A* state agency required to remit payments pursuant to
32 paragraphs (1) and (2) may request a waiver of those requirements
33 from the department. The department may grant a waiver if it
34 determines that there will not be a negative impact on the interest
35 earnings of the General Fund. If there is a negative impact to the
36 General Fund, the department may grant a waiver if the requesting
37 state agency follows procedures designated by the department to
38 mitigate the impact to the General Fund.

39 (e) ~~Any~~ *An* employer not required to make payment pursuant
40 to subdivision (d) ~~of this section~~ may elect to make payment by

1 electronic funds transfer in accordance with Section 13021.5 under
2 the following conditions:

3 (1) The election shall be made in a form, and shall contain
4 information, as prescribed by the director, and shall be subject to
5 approval by the department.

6 (2) If approved, the election shall be effective on the date
7 specified in the notification to the employer of approval.

8 (3) The election shall be operative from the date specified in
9 the notification of approval, and shall continue in effect until
10 terminated by the employer or the department.

11 (4) Funds remitted by electronic funds transfer pursuant to this
12 subdivision shall be deemed complete in accordance with
13 subdivision (d) or as deemed appropriate by the director to
14 encourage use of this payment method.

15 (f) Notwithstanding Section 1112, ~~no interest or~~ and penalties
16 shall *not* be assessed against ~~any an employer who~~ that remits at
17 least 95 percent of the amount required by subdivision (c) or (d)
18 if the failure to remit the full amount is not willful and any
19 remaining amount due is paid with the next payment. The director
20 may allow any employer to submit the amounts due from multiple
21 locations upon a showing that those submissions are necessary to
22 comply with subdivision (c) or (d).

23 (g) The department may, if it believes that action is necessary,
24 require any employer to make the report or return required by this
25 section and pay to it the tax deducted and withheld at any time, or
26 from time to time but no less frequently than provided for in
27 subdivision (a).

28 (h) ~~Any~~ An employer required to withhold any tax and ~~who that~~
29 is not required to make payment under subdivision (c) shall remit
30 the total amount of income tax withheld during each month of each
31 calendar quarter, on or before the 15th day of the subsequent month
32 if the income tax withheld for any of the three months or,
33 cumulatively for two or more months, is three hundred fifty dollars
34 (\$350) or more.

35 (i) For purposes of subdivisions (a), (c), and (h), payment is
36 deemed complete when it is placed in a properly addressed
37 envelope, bearing the correct postage, and it is deposited in the
38 United States mail.

39 (j) (1) In addition to the withholding report, quarterly return,
40 and report of wages described in subdivision (a), each employer

1 shall file with the director an annual reconciliation return showing
2 the amount required to be withheld under Section 13020, and any
3 other information the director shall prescribe. This annual
4 reconciliation return shall be due on the first day of January
5 following the close of the prior calendar year and shall become
6 delinquent if not filed on or before the last day of that month.

7 (2) The requirement to file the annual reconciliation return for
8 the prior calendar year under this subdivision shall not apply to
9 the 2012 calendar year and thereafter.

10 (k) The requirement in subdivision (a) to file a quarterly return
11 shall begin with the first calendar quarter of the 2011 calendar
12 year.

13 (l) *The changes made to this section by the act adding this*
14 *subdivision shall apply on and after January 1, 2013.*

15 *SEC. 9. Section 13021.5 of the Unemployment Insurance Code*
16 *is amended to read:*

17 13021.5. (a) “Electronic funds transfer” means ~~any~~ a transfer
18 of funds, other than a transaction originated by check, draft, or
19 similar paper instrument, that is initiated through an electronic
20 terminal, telephonic instrument, or computer or magnetic tape, so
21 as to order, instruct, or authorize a financial institution to debit or
22 credit an account. Electronic funds transfers shall be accomplished
23 by an automated clearinghouse debit, an automated clearinghouse
24 credit, Fedwire, or by other specific electronic funds transfer
25 methods approved in advance by the department.

26 (b) “Automated clearinghouse” means ~~any~~ a federal reserve
27 bank, or an organization established in agreement with the National
28 Automated Clearing House Association, that operates as a
29 clearinghouse for transmitting or receiving entries between banks
30 and/or bank accounts and which authorizes an electronic transfer
31 of funds between those banks or bank accounts.

32 (c) “Automated clearinghouse debit” means a transaction in
33 which the state, through its designated depository bank, originates
34 an automated clearinghouse transaction debiting the employer’s
35 bank account and crediting the state’s bank account for the amount
36 of tax. Banking costs incurred for the automated clearinghouse
37 debit transaction shall be paid by the state.

38 (d) “Automated clearinghouse credit” means an automated
39 clearinghouse transaction in which the employer through its own
40 bank, originates an entry crediting the state’s bank account and

1 debiting its own bank account. Banking costs incurred for the
2 automated clearinghouse credit transaction charged to the employer
3 and to the state shall be paid by the employer.

4 (e) “Fedwire” means—~~any~~ a transaction originated by the
5 employer and utilizing the national electronic payment system to
6 transfer funds through the federal reserve banks, pursuant to which
7 the employer debits its own bank account and credits the state’s
8 bank account. Electronic funds transfer payments may be made
9 by Fedwire only if prior approval is obtained from the department
10 and payment cannot, for good cause, be made pursuant to
11 subdivision (a). Banking costs incurred for the Fedwire transaction
12 charged to the employer and to the state shall be paid by the
13 employer.

14 (f) ~~“Banking—~~“Business day” means any day other than a
15 Saturday, Sunday, ~~or banking~~ legal holiday as recognized by the
16 Internal Revenue Service, *statewide legal holiday as recognized*
17 *by the State of California pursuant to Section 6700 of the*
18 *Government Code, or a day in which the department is closed*
19 *pursuant to Section 12b of the Code of Civil Procedure.*

20 (g) “Settlement date” means the date on which an exchange of
21 funds with respect to an entry is reflected on the books of the
22 Federal Reserve Bank.

23 (h) For the purposes of Section 13021, the “cumulative average
24 payment” means the cumulative dollar amount of deposits divided
25 by the number of payments submitted during a given period. For
26 the purposes of this section, the “cumulative average payment”
27 may also be defined as a single annual deposit, when only one
28 payment is made during the 12-month period ending June 30.

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31 CORRECTIONS:

32 Session Line—Page 1.
33